

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**MINNEAPOLIS FIREFIGHTERS'
RELIEF ASSOCIATION, et al.,**

Plaintiffs,

v.

MEDTRONIC, INC., et al.,

Defendants.

No. 0:08-cv-6324 PAM AJB

DECLARATION OF JEFFERY ACUFF

I, Jeffery Acuff, do hereby state under penalty of perjury:

1. I have been employed at Medtronic's Spinal & Biologics division for almost 6 years. My current title is Vice President of Enabling Technologies at Medtronic Spinal & Biologics. During the period from 2006 through 2008 I held three positions in the Spine division: I was Regional Vice President of Sales, Area Vice President of Sales, and Vice President of Sales for Biologics. As Vice President of Sales for Biologics, my job responsibilities included supervising the entire Biologics sales force. The facts stated herein are based on the personal knowledge I have gained during the course of executing my professional responsibilities at Medtronic.

Plaintiffs' Assertion That Medtronic Tracked Sales Of Infuse By Procedure

2. Medtronic does not track its sales of Infuse according to how the Infuse is used by the doctor. There are a few reasons for this. First, we often sell Infuse in large quantities to hospital or other medical institutions, rather than a single kit for a single patient. Thus, hospitals and other institutions use their stock of Infuse over time and then replenish their stock. Thus, when they purchase Infuse, they do not have a particular purpose in mind for it that they can tell us. Second, once Infuse is used in a particular procedure, the surgeons who use it are under no obligation to tell Medtronic in what type of procedure they used it.

3. Instead, in my experience, when we want to estimate what procedures Infuse is used in, we look to publicly-available data or other third-party data and extrapolate from those figures what the use of Infuse might look like. Let me stress that these are just estimates, and there is no way that I am aware of to either confirm or disprove the estimates. They are just a useful tool sometimes for us to consider.

4. I have reviewed the five documents that Plaintiffs contend establish that Medtronic tracked sales of Infuse by procedure. None of these documents tracks actual use of Infuse by procedure. Each only estimates Infuse usage based on outside data or ballpark estimates.

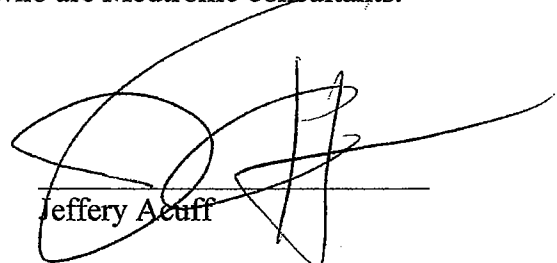
Key Opinion Leaders

5. To the best of my knowledge, Medtronic does not maintain a list of which doctors are key opinion leaders, nor has it adopted a company position on which doctors are key opinion leaders.

6. The term key opinion leader does not have a fixed definition in the medical device industry. Thus, who is a key opinion leader would depend on what field you were talking about, as well as whose opinion you were soliciting. For instance, a surgeon who is a key opinion leader in the area of lumbar fusions might not be a key opinion leader in cervical fusions. A surgeon who is a key opinion leader in trauma surgery might not be a key opinion leader in spinal fusions. And my opinion about who is a key opinion leader might differ from my supervisor's opinion or anyone else's opinion.

7. Within Medtronic, the term key opinion leader is sometimes used as a short-hand to refer to doctors who are Medtronic consultants or participate in other programs at Medtronic. So even when someone at Medtronic uses the term key opinion leader, it is not necessarily an indication of their opinion as to who is a key opinion leader. It is often a short-hand reference to doctors who are Medtronic consultants.

Dated: Dec. 13, 2011



Jeffery Acuff